Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-469

O. L. GRAGG, *Appellant*

v.

CAYUGA INDEPENDENT SCHOOL DISTRICT,
Appellee

On Appeal From The Supreme Court Of Texas

APPELLANT'S BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS OR AFFIRM

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November, 1976

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O. L. GRAGG, *Appellant*

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On Appeal From The Supreme Court Of Texas

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Now comes O. L. Gragg, Appellant in the above numbered and entitled cause, and files this brief in opposition to the motion of appellee to dismiss or affirm judgment of the Supreme Court of Texas, and in supplementation of the Jurisdictional Statement originally tendered by Appellant, and respectfully shows the Court the following:

I. MATTERS IN REPLY

A. The reasons for not finding jurisdiction in the Stein case are clearly not applicable to the instant case.

The reliance by appellee on *Stein v. Lewisville Independent School District,* 481 S.W.2d 436 (Tex.Civ.App. —Fort Worth 1972, writ ref'd. n.r.e.), cert. denied 414 U.S. 948, 38 L.Ed.2d 203 (1973) is not well taken. The Texas Appellate Court found three marked deficiencies in the proof offered in the *Stein* case. The court notes at page 440, "the undisputed evidence showed that the property taxed was not used by them for agricultural purposes, and also that any use of the property for agricultural purposes by others was not the primary occupation of, nor source of income for, the defendants or any of them." The opinion of the Texas Court of Civil Appeals does not suggest that a claim was ever made that art. VIII, §1-d of the Texas Constitution was repugnant to any part of the Constitution of the United States. It is immediately apparent that a finding of non-agricultural use would of itself constitute conclusive grounds that the decision of the Texas Court could be sustained on the basis of valid state law alone, and therefore the requisite element for appeal to this Honorable Tribunal would not exist. This coupled with the fact that there is no indication that appellant made any claim that art. VIII, §1-d was in any way repugnant to part of the Constitution of the United States clearly distinguishes *Stein* from the claim of this appellant.

The frequent reference by the Texas Court in the *Stein* case of the forbearance and patience shown to Mrs. Stein, who, though not a lawyer, represented herself in

a difficult and technical area led this appellant to scrutinize aspects of the case that admittedly would not normally be relevant. As a result of his investigation such marked deficiencies were discovered that appellant feels compelled to direct the attention of the court thereto.

The matter to which appellant refers is the Jurisdictional Statement of appellant in the *Stein* case. The argument in such case is so strikingly irrelevant that appellant has taken the liberty of reproducing it in Appendix "A". In the interest of keeping this reply short, no other part of said Jurisdictional Statement has been reproduced, but appellant would note that in the index Mrs. Stein refers to her argument under the caption "List of Authorities," "Judicial Notice of Communism Running Rampant Today, pages 1 thru 11". Mrs. Stein does not make an actual claim that art. VIII, §1-d is repugnant to any part of the Constitution of the United States, rather she seems to make some vague contention that our federal constitution gives her some type of inherent right of appeal. It is little wonder that the response to her statement by appellee in said case utilized less than two and one half pages.

This appellant applauds the right of access to the courts by all citizens who choose to represent themselves, but obviously the mischief that can be wrought from such representation is apparent were the court to accept the contention by appellee that *Stein* had decided the issue of this case, without affording appellant independent review of his Jurisdictional Statement unfettered by the *Stein* decision.

The distinctions between *Stein* and the instant case are apparent from the opinion of the Texas Court of Civil Appeals, but when supplemented by the background ma-

terial of said case, *Stein* is reduced to complete immateriality.

B. Matters in reply to points two and three of appellee.

Appellant is in disagreement with appellee that the Supreme Court of Texas did not pass on the federal question. In the original Jurisdictional Statement of appellant at C-8 the court expressly stated, "so long as it is thus interpreted, we do not believe the classification will encounter the possibly constitutional objections conditionally raised by petitioner Gragg." It is submitted that this is an express holding in favor of constitutionality.

In any event, the court of necessity had to pass on the constitutionality of the act as applied in order to reach the decision rendered. It is the claim of appellant that to apply the agricultural use provision in a way so as to make an income balancing test requisite to eligibility renders such article repugnant to the Fourteenth Amendment to the Constitution of the United States, for reasons set forth in his Jurisdictional Statement. The utilization of such test and the premise of appellant are mutually exclusive. In upholding the validity of the article the court of necessity held against the contention of appellant, and in favor of the constitutionality of the article i.e., the court did not accede to the position of appellant that an income balancing test was improper. Thus even without the express holding mentioned above the decision constitutes a holding on the constitutional issue raised by appellant. *United Fuel Gas Company v. Hallanan,* 257 U.S. 277, 66 L.Ed. 234 (1921).

In regard to the contention by appellee that the appeal presents no substantial federal question, appellant feels

that the reasons advanced in his Jurisdictional Statement are sufficient to establish the contrary of the proposition. A restatement of such material would merely be redundant and thus no further comments on this point are deemed necessary.

C. In reply to proposition four of appellee, appellant says that the opinion of the Texas Supreme Court cannot be sustained on adequate non-federal grounds.

The deficiency of proof attributed to appellant is that he failed to prove his agricultural income was greater than his non-agricultural income. It is the validity of this very requirement that is here at issue. If the court accepts the proposition of appellant that an income balancing test imposes an arbitrary classification, then the alleged deficiency of proof becomes moot.

D. In reply to point five of appellee, appellant states:

"A statute may be invalid as to one set of facts, and yet valid as applied to another." *United Fuel Gas Company, supra.* It is quite apparent that that portion of the agricultural community which has agricultural income in excess of non-agricultural income is not faced with the problem of the 1/3 to 2/3 of the community which does have an excess of non-agricultural receipts. The enactment is clearly valid to the former.

As appellant pointed out in his Jurisdictional Statement, some thirty-two states have agricultural use enactments. All are designed to alleviate the economic pressures being experienced by agriculturists. The enactment clause by which the Texas amendment was proposed clearly illustrates

that Texas is no exception, "Proposing an amendment to Article VIII, Constitution of the State of Texas, by adding Section 1-d to provide that all land owned by natural persons designated for agricultural use shall be assessed for all tax purposes on the consideration of only those factors relative to such agricultural use." Appellee's Motion to Dismiss, Appendix "B".

The purpose of the enactment is clear. It is the agricultural community as a whole to whom relief is proffered. There is not the slightest suggestion that relief is intended for a specific segment thereof, as would be the case were the contention of appellee adopted.[1] The capricious nature of seeking a diachotomy based on the criteria for which appellee contends has already been demonstrated in the Jurisdictional Statement.

The holding that the Texas agricultural enactment is repugnant to the Constitution of the United States when applied so as to capriciously exclude from its scope what is admitedly agricultural land should not invalidate the entire enactment. Such a holding would not render the enactment in the least inconsistent with the enacting clause as stated by the state legislature, or do violence to the premise upon which all such enactments, including that of Texas, appear predicated. Furthermore, the injustices envisaged by appellee simply do not exist, as the experience of other states illustrates. A number of other states deem very nominal criteria sufficient for determining what is and is not agricultural land.[2] None apply unusual, unnatural, capricious, or unreasonable standards as is done in the instant case.

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1. See Jurisdictional Statement, at 14-17.

2. Some specific examples of the criteria utilized by other states are set forth in the Jurisdictional Statement, at 12-13.

II. SUPPLEMENTAL MATTERS

Since the docketing of the Jurisdictional Statement offered by appellant certain matters have happened affecting the stay of mandate to which the attention of the court should be directed. In the Jurisdictional Statement it was pointed out that the existing stay and supersedeas had been extended by the Supreme Court of Texas until November 1, 1976. A copy of such order may be found at D-5-1 of said Jurisdictional Statement.

On the 13th day of October, 1976, appellant filed a motion with the State Supreme Court requesting a continuance of said stay, "Pending a Final Judgment by the Supreme Court of the United States," or in the alternative asserting his right to file a new supersedeas pending such final disposition.

The motion of appellant was granted in part and denied in part, said order of the court being included herein as Appendix "B". The stay was granted, but only for a period of sixty days from November 1, 1976. Specific attention is directed to the concluding portion of said order of the Supreme Court of Texas which reads, "It is further ordered that the mandate shall issue at the expiration of said sixty days unless the U. S. Supreme Court, or a justice thereof, shall order that it be stayed."

CONCLUSION

It is clear that the *Stein* case did not pass upon precisely the same question as is at issue here, and indeed, the opinion of the Court of Civil Appeals makes it abundantly clear that sufficient non-federal grounds existed not present in the instant case to make proper a finding

that this Honorable Tribunal had no jurisdiction. The background of said case emphasizes its irrelevance to the instant cause.

Appellant continues in his belief that he has established that the central question is whether or not an income balancing test speaks to the purpose of the enactment. It is to be noted that appellee does not challenge such standard as a proper criterion, and appellant submits that appellee has been unsuccessful in his attempt to circumvent said standard.

It is clear that a recognition of the impediment urged by appellant would not result in invalidating such enactment in its entirety.

Appellant accordingly respectfully submits that he has established that a substantial federal question exists, and that the matter should be set for plenary consideration.

Respectfully submitted,

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November, 1976

APPENDIX "A"

In The
SUPREME COURT OF THE UNITED STATES
. . . . . Term, ...

No. . . . . .

BETTY M. STEIN, Independent and as Administratrix of the Estate of Barbara Dian Meyer, nee Barbara Dian Minyard and Bob Minyard,
Petitioner-Appellant,

v.

LEWISVILLE INDEPENDENT SCHOOL DISTRICT and CITY OF LEWISVILLE, Intervenor,
Respondent-Appellee.

On Appeal From the Supreme Court of the State of Texas

JURISDICTIONAL STATEMENT

To The Honorable Justices:

I.

Comes now petitioner, Betty M. Stein, with power of attorney for Barbara Dian Minyard Meyer, and Bob Lee Minyard, petitioner's children, and appeals to the Supreme Court of the United States from a refusal for writ of error by the Texas Supreme Court, which court confirmed

the opinion by the Court of Civil Appeals For the Second Supreme Judicial District, Ft. Worth, Texas, Tarrant County. Said Court of Civil Appeals ordered foreclosure of petitioner's farmland and a reversal of the amount awarded for attorneys fees to be heard by a jury and in an inpersonam action only.

II.

The 158th District Court of Denton County, with Judge Temple Driver of Wichita Falls, Texas District Court sitting for Judge Bob Scofield, rendered a judgment of foreclosure upon petitioner's farmland in the amount of $4,456.09 for the Lewisville Independent School District and $2,448.46 for the City of Lewisville, and 10% attorneys fees for each attorney to be added to each award with interest to date of payment on September 23, 1971.

III.

Petitioner is appealing on the grounds of a complete failure of due process which due process of the law is guaranteed to each citizen of the United States under the Constitution of the United States, Amendment Article XIV, and Amendment Article V, and for the infringement thereof, under the laws of the United States, one has a right to appeal to the United States Supreme Court.

Due process, petitioner contends, means the right to appeal to the United States Supreme Court the infringement thereof and the right to be heard fully by a competent jury or judge; because petitioner's jury was snatched from her on a motion for an instructed verdict, which motion itself petitioner contends is repugnant to the due

process clause and equal protection clause of the United States Constitution because said motion in the hands of the unscrupulous, can, is, and was abused, in petitioner's delinquent tax case concerning 48.45 acres of farmland.

IV.

In May, 1968, the Lewisville Independent School District joined in a case brought by the State of Texas, State and County Tax Collector for the collection of delinquent taxes, school taxes, and state and county taxes. Petitioner was shocked that the state of Texas had sued her because she had always tried to pay the state and county taxes because she did not think they were excessive and the amount was not too large for her to pay on the farmland; therefore she immediately found out which years were due and the collector went back about five years and found a year or two unpaid; but petitioner had never received a notice that there were any unpaid state and county taxes and she immediately wrote them to this effect and went in and paid to state and county tax-collector the amount he said was due; but, petitioner had not paid in the school taxes because the tax-collector had become unreasonable in his demands of more money than the farm was making by farming vicariously through lessees for many, many years. Since she had been left a widow with two children, one of them five months old in 1946, and she was afraid to live on the farm alone with the small children; therefore she lived in an apartment in Dallas, Texas and farmed vicariously through others. Petitioner since 1946 to the present date of February 1972 has never received more than $50.00 per month for the leasing of the farmland which was a total of $600.00 per year. But the school district began to jump

the taxes beyond the "reasonable cash market value, not to be exceeded limitation placed thereon by Article 8, Section 20 of the Texas Constitution as to delinquent taxes. The School District and the City of Lewisville (farmland taken into the city in 1964) began a wrongful scheme of valuation by using as their tests what is known as condemnation theory or tests for value such as "highest and best value, willing seller and willing buyer" based upon potential uses of petitioner's farmland and not upon the present use which was farmland bringing only $600.00 per year. Petitioner contended that the farmland might have great potential worth but such potential worth or value did not increase her meager income a fraction; therefore she simply could not and did not have the necessary funds they demanded and finally brought suit against her for collection thereof. The fact that petitioner did not have the excessive taxes did not make her hands dirty or show a lack of good faith and the law gave her a right to fight in the courts, excessive taxes.

V.

After the State of Texas withdrew from the tax suit they brought in 1968, the Lewisville Independent School District found themselves without an attorney to get the case dismissed and to refile on petitioner. But, alas, on November 5, 1969 a new District Court was created in Denton County, Denton Texas with a Judge Bob Scofield presiding. A list of cases were transferred to the new 158th District Court from the 16th District Court in the Denton County Court House and one of the cases was the remaining portion of the original tax case originally brought by the State of Texas. The remaining portion, being, of course, the portion intervened into by The

Lewisville Independent School District; but, there was no attorney to get it dismissed because the state's attorney, Bill Harte of Eastland no longer represented the school district; therefore someone had to be paid to get said case dismissed so the school district could refile, and alas, the bright young judge, Bob Scofield, and petitioners former attorney who represented her in the original suit, got together and elected dumb-dumb Stein (petitioner) to pay for it in this manner. Royce Coleman, the attorney petitioner hired, wrote petitioner a letter stating that he had secured a judgment of dismissal *with prejudice,* and that, of course, would make her taxes null and void for the years 1954 through 1968 and that for this fine little piece of work, that petitioner owed him $50.00 and would she please send it to him. Of course, she sent it to him, thinking he had secured her a good and valid judgment. But, alas, in May 1971, the school District sued her for the years 1954 through partially 1971 for delinquent taxes with interest and penalty, and petitioner, not having any money with which to hire an attorney and being in a state of shock jumped into the suit and represented herself. Over tweny-years ago, petitioner had gone to law school and had taken the Texas Bar examination, but she had forgotten almost everything and she did not know very much because she only made a 72 on the bar examination and therefore did not get a license to practice in the state of Texas. But, nevertheless, there was absolutely nothing else for her to do but to represent herself and children.

VI.

Of course, on her motion for summary judgment, she contended she had a good and valid judgment granted on August 10, 1970; but during this pre-trial time on August

18, 1971, and shortly before the trial which had been set for September 21, 1971; notice for the first time came to her that Judge Bob Scofield had entered a modification of his judgment of dismissal with prejudice for lack of prosecution and he struck out the "with prejudice" wording on February 3, 1971, six months after term time and appeal time and such action upset petitioner terribly and, of course, she objected, but to no avail. And some weeks ago, she realized that August 10, 1970 judgment was void, because she found sometime earlier that the portion of the case that had not been dismissed had been transferred to the 158th District Court and he had worked out a little scheme to issue it out of the 16th District Court but with his signature thereon, and he should have issued the judgment of dismissal out of the 158th the court to which it had been transferred, but he knew how to get the dismissal paid for and still allow the school district to return and bring a new suit. Judge Bob Scofield's remark to petitioner in his office before others sometime before the new school tax case came on to be heard that if she did not pay her taxes, then he would have to pay more, now, at this late date, was the basis of all of the sadism, brutality, lack of dignity, and lack of honesty, that he could muster for petitioner during the days of September 21, 1971 through December 8, 1972 and some days thereafter.

VII.

Petitioner was screamed at, harassed, insulted, embarrassed, in front of others, belittled, ridiculed, her statement of fact was changed, rearranged, altered, and material taken out after her statement of facts was confiscated by Judge Bob Scofield after her bills of exceptions were

combed and examined. The transcript reflected Judge Temple Driver as having heard the case in the 16th District Court when in fact he heard and tried it in the 158th District Court sitting for Judge Bob Scofield. The wrong term time was given in the transcript, the wrong address of appellant petitioner was put on said transcript. Judge Bob Scofield screamed at her that she could not question the added 10% attorneys fees on her appeal, but she got that part reversed and he took away her tape recorder at one of the hearings concerning the untrue statement of facts.

VIII.

Judge Temple Driver in his addendum to the judgment stated that the reasonable market value of the farm land was four thousand dollars per acre, which would be approximately $192,000, and then he ordered a foreclosure on the entire two tracts of farmland for approximately $7,594.99 including 10% attorneys fees when our Texas Constitution states clearly and with the idea in mind to protect citizens from the unscrupulous "any means to and end people" that a foreclosure may be only to a "sufficient" amount of property, farmland, to satisfy award, Article 8, Section 13, and Texas Statutes point out specifically that amounts must be cut out in squares starting from the east corner if possible for only sufficient amounts to satisfy the award in a judgment.

IX.

Therefore, one can easily see a conspiracy existed to attempt to obtain petitioner's entire farm at an auction sale; but, petitioner borrowed enough money to put up a supersedeas bond after being advised to do so by a

young attorney. But, the supersedeas bond only gave the unscrupulous a place to hide because they argued to the court of civil appeals and to the Texas Supreme Court that they were looking to the bonding company for payment and not any longer to the farmland; and petitioner has had to borrow at a great interest enough money to cover the judgment in the event the United States Supreme Court should rule against her and she will have to be in debt twenty years or more and if a depression should come, she might lose her mortgaged property. She does not have now sufficient monies to pay almost $1,000.00 per year for the city, school, state and county taxes on her four-apartment building due to vacancies and extremely high cost of maintenance let alone another almost $1,000.00 per year for the city and school taxes for the farmland when she only gets $600.00 per year from it. And furthermore, she is entitled to make a profit from a business venture and she can make no profit from $600.00 per year from the farmland if the ad valorem taxes are almost $1,000.00. The state and county taxes are just $22.80 on the farmland because she homesteads the farmland and the state and county allow her the agricultural exemption because the farmland has been such for over 100 years and petitioner has had the farm for over twenty-seven years and leased it and it has always been used as farmland by her. Also, petitioner has a U. S. Constitutional protection against retroactive laws and the agricultural exemption law went into effect only about 1965 after petitioner had long been established at the farmland and the U. S. Constitutional law that a persons property, life, or liberty cannot be taken without due process, petitioner believes will protect her against the "any means to and end personalities" in power in the Denton County Court House.

X.

Petitioner has always been ready to borrow enough money to pay her share of fair taxes, but she has fought and will continue to fight excessive, abusive, and wrongfully evaluated taxes which work undue hardship on citizens with limited incomes. Also, she rendered her farmland since 1968, but the Plaintiff's in the tax suit would not acknowledge them or use them as a basis for their taxes due but instead used their abusive assessments based upon condemnation theories and tests and not upon the test set out in our Texas Constitution. The wrongful scheme of valuation is being used on all of the citizens and many are being forced to sell their farmland and homes, etc.

XI.

Petitioner's pray that the U. S. Supreme Court will take jurisdiction of her appeal and halt the unscrupulous "any means to and end personalities" and allow her to make a profit on her farmland. And, to also investigate why the Texas Supreme Court, Chief Justice, The Honorable Joe Greenhill or the Clerk of said court has remained silent as to petitioner-appellant's missing "Newly Discovered Evidence paper which was attached to the Auditor's Report for 1972 but, was not returned to appellant but had been detached therefrom.

XII.

Petitioner has detected that communism is also running rampant in many government (local) agencies here in Dallas County.

XIII.

The question No. 1. Herein is "Whether or not the wrongful scheme of valuation as used by the tax collectors, "highest and best value" and "willing seller and willing buyer" are the tests set out by the Texas Constitution which states in Article 8 Section 20, that the only test to be used by the tax collectors and boards of equalization is the fair *cash* market value test, which is never to be exceeded?

The question No. 2. Herein is whether or not the entire farmland should have been foreclosed upon for a proportionately smaller judgment award with disregard to the Texas Constitution Article 8, Section 13?

The question No. 3. Why the silence on said missing "Newly Discovered Evidence" paper? This paper was attached to the "Auditors' Report sent to the Supreme Court of Texas by petitioner upon receiving the "Auditors' Report."

The question No. 4. Herein is whether or not the judge, of the 158th District Court, Bob Scofield acted with dignity and restraint becoming a district court judge?

Notice of Appeal was given to the Texas Supreme Court shortly before the Motion for Rehearing was overruled on November 22, 1972, as well as to the Court of Civil Appeals a few days later, and also to the District Court of Denton County, Texas on December 13, 1972. Also, shortly before December 13, 1972, notice was given to the Clerk of U.S.

XIV.

Petitioner also makes a motion that Supreme Court Justices order up the entire record in order to see for

themselves the whole truth and change in the style of the case by Judge Massey. The foreclosure judgment was not against R. L. Minyard estate as Judge Massey stated, but against Betty M. Stein as Administratrix of Estate of Barbara Dian Minyard Meyer and Bob Minyard when said property is still in the name of R. L. Minyard and recorded as such and not in the name of any of defendants on the records in Denton County, Texas.

/s/ BETTY M. STEIN

Betty M. Stein,

6600 Westchester Dr.
Apt. 1
Dallas County, Texas 75205

Pro se and with Power of Attorney for Children.

Sworn to and subscribed to before me and known to me personally, and that all of the above statements are true and correct to the best of her knowledge, on this the 15th day of February, 1973.

(illegible sig.)

Notary

My Commission expires on the 30th day of June, 1973.

APPENDIX "B"

ORDER OF THE COURT

NO. B-5444

O. L. GRAGG, Petitioner	§	
	§	From
v.	§	
	§	Anderson County
CAYUGA INDEPENDENT SCHOOL DISTRICT,	§	
	§	Twelfth District
Respondent	§	

Motion of O. L. Gragg for extension of stay of mandate and execution and enforcement of judgment filed on October 13, 1976, having been duly considered by the Court, it is ordered that said motion be, and hereby is, granted.

It is, therefore, ordered that the Clerk of this Court withhold issuance of mandate in this cause for a period of sixty days from November 1, 1976, and that execution and enforcement of the judgment entered herein be stayed for such period.

It is further ordered that the mandate shall issue at the expiration of said sixty days unless the U.S. Supreme Court, or a justice thereof, shall order that it be stayed.

By the Court

In Chambers

October 26, 1976

I, GARSON R. JACKSON, Clerk of the Supreme Court of Texas, do hereby certify that the above is a true and correct copy of order of the Supreme Court of Texas with reference to staying of mandate in the case of O. L. GRAGG v. CAYUGA INDEPENDENT SCHOOL DISTRICT, No. B-5444, from Anderson County, Twelfth District, as such order appears in the minutes of said Court under the date of October 26, 1976.

IN TESTIMONY WHEREOF, Witness my hand and seal of the Supreme Court of Texas, at the City of Austin, on this 26th day of October, 1976.

/s/ GARSON R. JACKSON
Garson R. Jackson, Clerk

(SEAL)